

EXHIBIT D



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Transcript of Jamie Ellis, Corporate Designee

Date: October 24, 2017

Case: Webster, et al. -v- LLR, Inc, d/b/a/ LuLaRoe

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

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1	point in time did she work for LuLaRoe?	10:30:49
2	A Not that I'm aware of.	10:30:53
3	MR. GRAHAM: When you're answering your	10:31:02
4	questions, don't look to me or to Mark. Just	10:31:03
5	whatever your memory is.	10:31:06
6	THE WITNESS: I'm sorry. I just look off	10:31:08
7	to the side, just whatever way I'm facing.	10:31:10
8	BY MS. IVERSON:	10:31:10
9	Q Which I agree with that assertion, and I	10:31:16
10	would have brought it up, but for the relationship,	10:31:19
11	I wasn't too concerned if you were looking over	10:31:21
12	there.	10:31:24
13	So you said Mr. Transtrum sought you out to	10:31:26
14	work for the company, and I understand you started	10:31:29
15	around January, 2016?	10:31:33
16	A Yes.	10:31:35
17	Q What was your position when you started?	10:31:35
18	A Senior tax analyst.	10:31:37
19	Q Was there somebody that had that position	10:31:40
20	before you?	10:31:46
21	A No.	10:31:47
22	Q And has your title changed at all since	10:31:48
23	you've been with LuLaRoe?	10:31:57
24	A No.	10:31:58
25	Q What are your job responsibilities as a	10:32:00

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1 the first paragraph. I don't know that you need to 11:56:29
2 read past 2928 except just to make sure it doesn't 11:56:32
3 impact that. 11:56:36

4 THE WITNESS: Okay. 11:56:42

5 MR. GRAHAM: Kelly, when you said the top 11:56:53
6 of 2928, you mean the final line? 11:56:54

7 MS. IVERSON: Yeah, one sentence. Yeah, a 11:56:57
8 sentence-and-a-half. Excuse me. 11:56:59

9 THE WITNESS: So just up to this line here 11:59:01
10 on 2928? 11:59:03

11 BY MS. IVERSON: 11:59:04

12 Q Yes. 11:59:05

13 A Okay. Let me make sure. 11:59:06

14 Q Mr. Stidham has been designated to talk 11:59:09
15 about the policies themselves, but you've been 11:59:12
16 designated to talk about LuLaRoe's communications 11:59:15
17 with independent retailers related to this policy as 11:59:17
18 well as complaints and responses to complaints. 11:59:21

19 So I just want to make sure we're on the 11:59:23
20 same page about what the policy was as of April, 11:59:25
21 2016. 11:59:32

22 Does this document set forth the policy as 11:59:33
23 you understood it? 11:59:40

24 A It appears that it sets forth what Audrey 11:59:43
25 was capable of doing. 11:59:51

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1	Q	And so as -- can we agree that as of April	11:59:53
2		of 2016 that across the board, Audrey collected	12:00:03
3		sales tax based upon a consultant location?	12:00:07
4	A	Yes.	12:00:10
5	Q	And that was regardless of where the	12:00:16
6		product was shipped to; is that correct?	12:00:18
7	A	Yes.	12:00:23
8	Q	Okay. And when you say it was something --	12:00:24
9		this is what Audrey was capable of doing, what do	12:00:35
10		you mean by that?	12:00:41
11	A	It's what Audrey was capable of calculating	12:00:41
12		at the time.	12:00:47
13	Q	Okay. That restated the same sentence.	12:00:51
14		I'm wondering what you mean by that, if you can	12:00:56
15		explain that to me.	12:01:00
16	A	Audrey could calculate the sales tax based	12:01:01
17		upon the location of the retailer.	12:01:06
18	Q	Was the retailer able to change the sales	12:01:09
19		tax in Audrey when they shipped a product out of	12:01:21
20		state?	12:01:24
21	MR. GRAHAM:	Objection. Vague and	12:01:25
22		ambiguous as to time.	12:01:26
23		If you can answer.	12:01:27
24	BY MS. IVERSON:		12:01:33
25	Q	And with time, we're talking about after	12:01:34

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1	this April of 2016 policy.	12:01:36
2	Was the retailer able to change the amount	12:01:42
3	of sales tax charged on out-of-state purchases after	12:01:45
4	April, 2016, and before Bless?	12:01:51
5	A Before Bless? Potentially, yes.	12:01:53
6	Q Okay. In what circumstances?	12:02:02
7	A If they were using the app, they could.	12:02:05
8	Q Were retailers told that they should not	12:02:18
9	change the sales tax rate in Audrey?	12:02:36
10	A They can't change the rate in Audrey, but	12:02:41
11	they can change -- oh, let me rephrase this and make	12:02:44
12	it more clear.	12:02:50
13	In the app, they can change it, and we have	12:02:52
14	advised them not to in certain circumstances	12:02:56
15	depending on where they were located to change the	12:02:59
16	rate if they were going to a different location for	12:03:02
17	a pop-up.	12:03:06
18	Q So the only time that they were supposed to	12:03:12
19	change the rate was if they were going to a	12:03:15
20	different location for a pop-up. Is that a correct	12:03:18
21	statement?	12:03:23
22	A Yes.	12:03:24
23	Q Did Audrey have a limit on the number of	12:03:24
24	times, say, per month, per week, per year -- I don't	12:03:27
25	know. You'll have to answer this -- that a	12:03:31

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1	consultant could change their location in Audrey?	12:03:33
2	A Not that I'm aware of.	12:03:36
3	Q So this document that I provided here which	12:03:36
4	I marked as Exhibit F, this says, "Weekly Home	12:04:01
5	Office Update Notes." Is this based upon some kind	12:04:08
6	of communication to the consultants from home	12:04:13
7	office?	12:04:15
8	A Yes.	12:04:18
9	Q Was this a communication to all	12:04:19
10	consultants?	12:04:22
11	A Yes, all of those that joined the webinar.	12:04:23
12	Q Okay. Explain to me, then, how this April,	12:04:30
13	2016, policy was disseminated to the consultants.	12:04:42
14	You said there's some kind of webinar.	12:04:48
15	A Uh-huh, yes.	12:04:50
16	Q And then what is this document? A summary	12:04:51
17	of the webinar?	12:05:00
18	A Yes.	12:05:01
19	Q Is that sent out after the webinar?	12:05:02
20	A Yes.	12:05:04
21	Q Does LuLaRoe keep the webinars?	12:05:04
22	A I'd have to talk to our other department	12:05:08
23	and see.	12:05:11
24	Q Was there any other way that this April,	12:05:13
25	2016, policy was disseminated to consultants other	12:05:22

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1	than the webinar and this summary?	12:05:26
2	A Potentially, yes.	12:05:46
3	Q How was it disseminated to all consultants?	12:05:46
4	A Through email.	12:05:51
5	Q And what would have been emailed? Would it	12:05:52
6	be just this document or something different?	12:05:56
7	A I don't know.	12:05:58
8	Q In preparing for this deposition, did you	12:05:59
9	look into how LuLaRoe communicated with its	12:06:05
10	independent retailers related to the April, 2016,	12:06:09
11	policy?	12:06:13
12	A Did I look into that?	12:06:13
13	Q Yes. Did you?	12:06:16
14	A Yes.	12:06:17
15	Q Okay. What did you find about those	12:06:18
16	communications?	12:06:19
17	A I'm not sure I quite understand.	12:06:20
18	Q What all went -- what went out to all	12:06:28
19	consultants about this April, 2016, policy? Tell me	12:06:33
20	what information went to them.	12:06:36
21	A Basically what you see in the documents, in	12:06:38
22	the document here.	12:06:43
23	Q This?	12:06:44
24	A Yeah. This would have gone to all	12:06:44
25	retailers.	12:06:47

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1	Q	Okay. Well, initially, you said this would	12:06:47
2		have only gone to the retailers that attended the	12:06:50
3		webinar.	12:06:54
4	A	No. Those that were at the webinar would	12:06:55
5		have heard this, and this would have been sent to	12:06:58
6		all retailers because it's the home office update	12:07:01
7		notes.	12:07:04
8	Q	Okay. At some point, a white paper was	12:07:06
9		also sent to all consultants; right?	12:07:23
10	A	I'd have to see what document you're	12:07:28
11		talking about.	12:07:31
12		MS. IVERSON: This is going to be H and I.	12:08:25
13		(Ellis Exhibit Numbers H and I were marked	12:08:26
14		for identification.)	12:08:26
15		BY MS. IVERSON:	12:08:26
16	Q	I'm going to guess you're familiar with	12:08:31
17		these documents and don't need to read them; right?	12:08:33
18	A	I would still need to read through the	12:08:36
19		documents.	12:08:39
20		MR. GRAHAM: Without rereading it in its	12:09:35
21		entirety, are you familiar with this document?	12:09:37
22		THE WITNESS: Yes.	12:09:42
23		MR. GRAHAM: Exhibit H. And with Exhibit I	12:09:42
24		here?	12:09:45
25		THE WITNESS: Yes.	12:09:46

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1	Q	Well, the reason that sales tax was	13:34:57
2		incorrectly charged was because it was set up based	13:35:03
3		on the location of the consultant; right?	13:35:06
4	A	It could be potentially incorrectly	13:35:09
5		charged, yes.	13:35:12
6	Q	Okay. But we -- you had said it was	13:35:12
7		incorrectly charged. My question is: Was it	13:35:15
8		incorrectly charged because it was set up based on	13:35:18
9		the location of the consultant?	13:35:21
10	A	Not always. So, again, not all	13:35:22
11		transactions were incorrectly charged.	13:35:26
12	Q	Okay. For out-of-state sales from one	13:35:29
13		state to another, was it incorrectly charged --	13:35:35
14		let's say out-of-state sales from one state to one	13:35:39
15		of the 11 states in the amended complaint. Was it	13:35:42
16		incorrectly charged because it was set based on the	13:35:46
17		location of the consultant?	13:35:48
18	A	Yes. For the transactions that we have	13:35:51
19		identified, yes.	13:36:02
20	Q	Was it LuLaRoe's practice to provide this	13:36:03
21		sales tax memo and this white paper to consultants	13:36:08
22		if they questioned the April, 2016, policy?	13:36:10
23	A	It was sent to all retailers.	13:36:14
24	Q	Okay. Now, if a retailer would contact	13:36:17
25		LuLaRoe with questions about the policy, was it	13:36:21

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1 drafting the response? 13:49:12

2 A I would assume so. My recollection, I 13:49:15
3 would assume he would have been. 13:49:29

4 Q It was your recollection that he was 13:49:30
5 involved? 13:49:32

6 A Yes. 13:49:32

7 Q Okay. And in your response, you indicate 13:49:32
8 that in instances when the fashion consultant and 13:49:50
9 customer live in different sales tax jurisdictions, 13:49:55
10 e.g., different states, sales tax may be charged 13:50:00
11 incorrectly? 13:50:03

12 A Uh-huh. 13:50:04

13 Q So by June 28, 2016, can we agree that 13:50:04
14 LuLaRoe was aware that sales tax was being charged 13:50:12
15 incorrectly when the fashion consultant and customer 13:50:17
16 live in different sales tax jurisdictions, e.g., 13:50:20
17 different states? 13:50:23

18 A Which one are we looking at? You made a 13:50:24
19 reference to a response. Which response are we 13:50:29
20 looking at? 13:50:31

21 Q Well, both responses are essentially the 13:50:32
22 same. My question is not about a response but about 13:50:34
23 LuLaRoe's knowledge and asking if by June 28, 2016, 13:50:40
24 when this response was drafted, if LuLaRoe was 13:50:45
25 aware, by that point in time, that when the fashion 13:50:48

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1	consultant and customer lived in different sales tax	13:50:56
2	jurisdiction that sales tax may be charged	13:50:59
3	incorrectly?	13:51:02
4	A Yes. We made that aware even with the	13:51:02
5	white paper and sales tax memo.	13:51:06
6	Q I'm sorry. What did you say?	13:51:07
7	A Yes. As you saw -- as we already explained	13:51:09
8	in the H and I exhibit, we were aware, even at that	13:51:14
9	time, because we knew the best option that we could	13:51:18
10	do at that particular time was what was available.	13:51:20
11	So even at that point, as it states, we were still	13:51:23
12	doing the best we could with the information and	13:51:26
13	software that we had available at the time.	13:51:29
14	Q Okay. You want to go off the record?	13:51:31
15	A I just lost my mic.	13:51:57
16	Q Hey, at least it wasn't only me now. We're	13:52:02
17	just waiting for you to lose yours, Steve, and we'll	13:52:05
18	be a trifecta here.	13:52:10
19	A It just got caught on the chair.	13:52:17
20	Q After this June 28, 2016, response to these	13:52:22
21	two attorney generals, LuLaRoe continued to follow	13:52:28
22	the April, 2016, policy until Bless was fully	13:52:31
23	integrated; right?	13:52:35
24	A Yes.	13:52:37
25	Q And when was Bless fully integrated? I	13:52:38

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1	guess there was some kind of transition, and some	13:52:43
2	consultants used it and some didn't; is that right?	13:52:48
3	A Yes.	13:52:50
4	Q What date was -- let me back up.	13:52:50
5	Are there any consultants using Audrey now?	13:52:54
6	A No.	13:52:59
7	Q Okay. What was the last date that any	13:52:59
8	consultant, even just one, utilized Audrey?	13:53:01
9	A May 31, 2017.	13:53:05
10	Q So by June 1, 2017, every consultant	13:53:09
11	utilized Bless?	13:53:22
12	A Every consultant was off of Audrey.	13:53:23
13	Q Was off of Audrey. Okay.	13:53:26
14	Did you receive correspondence from any	13:53:30
15	other states' attorney general office regarding	13:53:36
16	complaints about the sales tax policy?	13:53:40
17	A I believe so.	13:53:43
18	Q What states?	13:53:45
19	A Pennsylvania, Minnesota -- I believe it was	13:53:48
20	Oregon.	13:53:59
21	Q Did LuLaRoe provide that information to	13:54:00
22	counsel?	13:54:03
23	A Yes. To CPAs and --	13:54:03
24	Q I mean, your counsel here.	13:54:08
25	A Yes. Oh, just recently it was one that we	13:54:09

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1	had just found.	13:54:13
2	MS. IVERSON: I don't believe we have that,	13:54:21
3	Steve.	13:54:22
4	MR. GRAHAM: I didn't know about this	13:54:23
5	myself.	13:54:25
6	When did you provide this?	13:54:25
7	THE WITNESS: I think just a couple days	13:54:28
8	ago.	13:54:29
9	MS. IVERSON: We don't have it from you	13:54:31
10	guys. We do have it from a right-to-know request.	13:54:33
11	MR. GRAHAM: So you have it?	13:54:33
12	MS. IVERSON: No. We don't have it from	13:54:33
13	you guys.	13:54:33
14	MR. GRAHAM: You have what the state of	13:54:36
15	Oregon has as a --	13:54:37
16	MS. IVERSON: We have what they gave us,	13:54:37
17	yes.	13:54:39
18	MR. GRAHAM: Okay.	13:54:39
19	MS. IVERSON: But we don't have it from	13:54:39
20	you.	13:54:41
21	BY MS. IVERSON:	13:54:41
22	Q Any other states besides Pennsylvania,	13:54:50
23	Minnesota, and Oregon?	13:54:51
24	A Not to my recollection, no.	13:54:53
25	Q Okay. Did you receive complaints from	13:54:55

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1	consumers about the sales tax policy?	13:54:58
2	A Yes.	13:55:02
3	Q And what was LuLaRoe's practice with regard	13:55:02
4	to responding to those complaints?	13:55:07
5	A Usually to request to have them talk to	13:55:09
6	their retailers and discuss it with their retailers.	13:55:11
7	Unless otherwise that they could not get a hold of	13:55:14
8	the retailer, then we would discuss it with them and	13:55:18
9	issue refunds if they so requested.	13:55:21
10	Q So the first response was to have them talk	13:55:23
11	to their retailers?	13:55:37
12	A Yes. Because they're the ones that are	13:55:38
13	supposed to handle customer service on the end --	13:55:40
14	they're the end user, the ones involved with the	13:55:42
15	customers. Our customers are our retailers.	13:55:46
16	Q And that covers one of my additional	13:55:48
17	questions was that the retailers are kind of the	13:55:52
18	frontline of communication with the end consumers of	13:55:56
19	LuLaRoe products?	13:56:00
20	A Yes.	13:56:00
21	Q Okay. And were the consultants given any	13:56:01
22	other information about the April, 2016, policy	13:56:09
23	other than what we've discussed: The sales tax	13:56:14
24	memo, the white paper, the webinar, and the summary	13:56:17
25	of the webinar?	13:56:22

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1	A	Not to my knowledge. I don't know if there	13:56:24
2		was others, if others had said anything else other	13:56:28
3		than what was directed in these.	13:56:31
4	Q	Okay. So the information that LuLaRoe gave	13:56:33
5		to the consultants was the white paper saying --	13:56:36
6	A	This is what we're doing. This is what the	13:56:39
7		software is doing and our policy and our position.	13:56:42
8	Q	And it takes the position that it is a	13:56:46
9		proper and lawful way to do it; right?	13:56:49
10		MR. GRAHAM: Objection. Calls for a legal	13:56:51
11		conclusion.	13:56:53
12		BY MS. IVERSON:	13:56:55
13	Q	Go ahead. You can answer.	13:56:56
14	A	I can't answer if it was proper and lawful.	13:56:58
15		That's what you guys --	13:57:04
16	Q	No, my question is what the white paper	13:57:06
17		says.	13:57:09
18	A	Which part of the white paper? Because	13:57:09
19		even in the white paper, it says we are doing the	13:57:13
20		best of our ability.	13:57:16
21	Q	Yeah, you want to be a good corporate	13:57:18
22		citizen; right?	13:57:19
23	A	Uh-huh. It says, "Most effectively with	13:57:21
24		the collective sales tax requirements of the taxing	13:57:27
25		states while balancing the interest of consultants."	13:57:27

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1	customer.PDF.	14:26:18
2	Do you know what that document is?	14:26:21
3	A I can make an assumption only on which one	14:26:22
4	that is.	14:26:27
5	Q Which one do you believe it is?	14:26:27
6	A I would think it's the sales tax memo.	14:26:29
7	Q Which is Exhibit H?	14:26:32
8	A Which is H is what I would assume that one	14:26:33
9	to be.	14:26:38
10	Q Okay. And was that one of LuLaRoe's	14:26:38
11	practices was to send customers that sales tax memo;	14:26:58
12	so they could be informed on how sales tax works and	14:26:51
13	how they are determined?	14:26:54
14	A It was one of the methods that retailer	14:27:01
15	support would tend to go towards.	14:27:05
16	Q Okay. Who is Andrea Hughes? Is she	14:27:07
17	retailer support?	14:27:16
18	A Yes.	14:27:17
19	Q What does retailer support mean?	14:27:19
20	A Basically our call center.	14:27:20
21	Q Okay.	14:27:26
22	A Call center and email team.	14:27:26
23	Q Did the tax team provide this information	14:27:28
24	to retailer support to give out to customers?	14:27:43
25	A I believe Terrel had disseminated it to all	14:27:48

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1	departments.	14:27:54
2	Q And LuLaRoe knew that these -- this sales	14:27:55
3	tax memo would be sent to end consumers?	14:28:08
4	A Yes.	14:28:14
5	Q Okay. And the second document, 18375, in	14:28:15
6	this group, was an Oregon customer.	14:28:31
7	A It appears.	14:28:34
8	Q Okay. And Derryl Trujillo responded.	14:28:36
9	Is he also in retailer support?	14:28:43
10	A Yes.	14:28:45
11	Q And he responded saying that sales tax is	14:28:48
12	calculated on the zip code of the retailer that the	14:28:53
13	customer purchases from?	14:28:58
14	A Uh-huh, yes, he did.	14:28:59
15	Q Okay. Was that a typical response that	14:29:00
16	LuLaRoe would make to customers?	14:29:03
17	A Not generally, no.	14:29:10
18	Q And this was January 21, 2017; right?	14:29:11
19	A Yeah.	14:29:14
20	Q It doesn't say '17, but this policy wasn't	14:29:14
21	in place January of '16; right?	14:29:20
22	A That's correct.	14:29:31
23	Q The next page, 18432, it was pretty much	14:29:32
24	the same response from Derryl to a different	14:29:39
25	customer?	14:29:44

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1	Q	But there's no indication in these	14:31:14
2		documents that any refunds were issued?	14:31:17
3	A	Yeah, not in these documents, no.	14:31:20
4	Q	Okay. The next page, 18444, a customer,	14:31:22
5		Ms. Brainard, indicates that she had clothing	14:31:31
6		delivered to Massachusetts, and she says, "Can I be	14:31:37
7		issued a refund on the tax?"	14:31:40
8		In response to that, did LuLaRoe issue a	14:31:48
9		refund?	14:31:51
10	A	It does not appear that Kia ever said	14:31:56
11		anything about issuing a refund to her.	14:32:06
12	Q	Okay. Is Kia --	14:32:08
13	A	But this never made it to the sales tax or	14:32:10
14		tax department either.	14:32:13
15	Q	Is Kia in retailer support?	14:32:13
16	A	Yes.	14:32:17
17	Q	Okay. And Kia said that the retailer	14:32:17
18		should have known that the tax is based on where the	14:32:21
19		consultant lives?	14:32:25
20	A	"A retailer should have known this and for	14:32:28
21		that, we do apologize" is what she stated.	14:32:31
22	Q	And that was in response, I guess, to	14:32:35
23		Ms. Brainard saying that the consultant had said it	14:32:38
24		was an issue with the LuLaRoe billing system.	14:32:41
25		Did LuLaRoe expect that the retailers would	14:32:47

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1 let the customers know that sales tax was charged 14:32:49
2 based upon the location of the consultants? 14:32:54
3 A Yes. When we sent the white paper or the 14:32:59
4 sales tax memo, when we sent all that information, 14:33:04
5 it was to the retailers, and it was for their being 14:33:07
6 able to explain how the system worked. 14:33:12
7 Q Okay. So you expected that the end 14:33:15
8 consumers would know that policy? 14:33:18
9 A No. We expected the retailers to know that 14:33:21
10 to explain it to the end customers. 14:33:24
11 Q Okay. So you did expect the retailers to 14:33:27
12 tell the end customers that? 14:33:30
13 A Yes. 14:33:32
14 Q The next page is 18499, and it looks like 14:33:35
15 Robin Donoghue -- I might be saying that wrong -- 14:33:45
16 emailed about a tax charged on a particular invoice 14:33:50
17 and said, "I want this refunded immediately." And 14:33:58
18 Summer Johnson replied. 14:34:10
19 Is Summer also in retailer support? 14:34:12
20 A Yes. 14:34:14
21 Q Okay. And she said tax is based on the 14:34:15
22 location of the consultant and then provided this 14:34:20
23 customer with the LuLaRoe sales tax 042016. 14:34:23
24 Would that be the sales tax memo or the 14:34:30
25 white paper? 14:34:33

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1	A	I believe so.	14:34:34
2	Q	Which one?	14:34:34
3	A	Sales tax memo.	14:34:35
4	Q	Okay. And then she refers the customer to	14:34:37
5		the consultant as well?	14:34:43
6	A	Yes.	14:34:50
7	Q	And Summer didn't issue a refund; right?	14:34:51
8	A	No. Sales tax was the only one that was	14:34:54
9		issuing the refunds, the tax department.	14:34:58
10	Q	At any point prior to the filing of the	14:35:07
11		complaint which was February 17, 2017, did LuLaRoe	14:35:54
12		make an announcement to all of its consultants that	14:35:59
13		it was going to refund the improperly charged sales	14:36:03
14		tax to the consumers in the 11 states identified in	14:36:12
15		the amended complaint?	14:36:15
16	MR. GRAHAM:	Objection. Vague and	14:36:16
17		ambiguous, lacks foundation.	14:36:17
18		You can answer, Jamie.	14:36:18
19	THE WITNESS:	Can you rephrase the	14:36:20
20		question.	14:36:21
21	BY MS. IVERSON:		14:36:21
22	Q	At any point prior to February 17, 2017,	14:36:22
23		did LuLaRoe make an announcement to its consultants	14:36:24
24		or retailers that it would refund customers that	14:36:28
25		were overcharged sales tax in the 11 states	14:36:36

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1	identified in the amended complaint?	14:36:41
2	MR. GRAHAM: Subject to my objection,	14:36:43
3	answer.	14:36:44
4	THE WITNESS: To my knowledge, no.	14:36:46
5	BY MS. IVERSON:	14:36:46
6	Q You participated in responding to	14:37:03
7	interrogatories --	14:37:07
8	A Yes.	14:37:07
9	Q -- that we served; right?	14:37:08
10	A Yes.	14:37:09
11	Q I'm going to give those to you. M is the	14:37:10
12	second set of interrogatories, and R is the first	14:37:48
13	set of interrogatories.	14:37:51
14	(Ellis Exhibit Numbers M and R were marked	14:37:52
15	for identification.)	14:38:06
16	MS. IVERSON: I had a rhyme and reason to	14:38:06
17	all the numbering up until we got the designations	14:38:08
18	of the topics. Sorry, Steve.	14:38:12
19	MR. GRAHAM: That's okay. Just as long as	14:38:15
20	they're clearly labeled.	14:38:17
21	BY MS. IVERSON:	14:38:24
22	Q So the first set of interrogatories asked	14:38:43
23	how many transactions and how much was charged in	14:38:52
24	sales tax -- I'm sorry. The number of sales made	14:38:59
25	and the total amount in dollars of sales made where	14:39:03

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1	interrogatories?	14:57:01
2	A Uh-uh. Yes.	14:57:01
3	Q The response to Interrogatory Number 1 and	14:57:03
4	Interrogatory Number 2, how did LuLaRoe determine	14:57:11
5	those amounts?	14:57:18
6	A By the actual invoices.	14:57:20
7	Q So LuLaRoe's able to identify each	14:57:26
8	transaction where sales tax was charged and the	14:57:34
9	product was shipped into one of the 11 jurisdictions	14:57:38
10	named in the complaint?	14:57:42
11	A After a lot of research and a lot of time	14:57:43
12	processing and gathering the information and where	14:57:47
13	it was held to combine and accurately put that	14:57:53
14	information together, yes.	14:57:58
15	Q Okay. You were able to ascertain the	14:57:59
16	different --	14:58:03
17	A At that time.	14:58:03
18	Q I'm sorry. Let me finish the question.	14:58:04
19	You were able to ascertain the different end	14:58:06
20	consumers that paid sales tax in the 11 states in	14:58:09
21	the complaint, who they were?	14:58:13
22	MR. GRAHAM: Objection. Lacks foundation.	14:58:14
23	Go ahead.	14:58:17
24	THE WITNESS: Can you repeat the question?	14:58:19
25	///	

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1	BY MS. IVERSON:	14:58:20
2	Q You were able to ascertain who the end	14:58:20
3	consumers were in those 11 jurisdictions that were	14:58:24
4	charged sales tax on transactions?	14:58:29
5	MR. GRAHAM: Same objection.	14:58:33
6	THE WITNESS: After much work and time and	14:58:35
7	effort going into programming and learning of the	14:58:38
8	system, getting the system to be put into place	14:58:42
9	where we could accurately identify where it was from	14:58:45
10	and to and the time and all of the effort put into	14:58:50
11	that particular effort long before any of this was	14:58:56
12	brought, it was a long, extensive road to get to	14:59:06
13	this point, yes.	14:59:13
14	BY MS. IVERSON:	14:59:16
15	Q So the answer is yes? I understand why you	14:59:16
16	want to explain that. I'll just say that, you know,	14:59:19
17	I've had correspondence with your counsel where	14:59:21
18	they're saying that your plans to refund taxes	14:59:21
19	before the complaint was filed is not relevant at	14:59:25
20	this stage and that we shouldn't be asking, and so I	14:59:25
21	didn't designate that as a topic, and we haven't	14:59:28
22	been given any discovery on it.	14:59:31
23	So I think the question is really we're	14:59:33
24	able to identify who paid the tax; right?	14:59:36
25	A Yes.	14:59:41

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1	BY MS. IVERSON:	15:21:58
2	Q Okay. Did you plan on providing any of	15:21:59
3	those consumers with any amount over and above the	15:22:00
4	actual amount of the taxes incorrectly charged?	15:22:07
5	A We would refund them the taxes that they	15:22:11
6	were due back.	15:22:15
7	Q And you would not include any kind of	15:22:16
8	interest on that in your plan; right?	15:22:19
9	A If they were due back sales tax --	15:22:20
10	MS. IVERSON: Mr. Stidham, you'll have your	15:22:25
11	opportunity tomorrow.	15:22:27
12	MR. STIDHAM: I'm sorry. What?	15:22:29
13	MS. IVERSON: I said you'll have your	15:22:30
14	opportunity tomorrow. So if you could refrain from	15:22:31
15	laughing at my questions, I'd definitely appreciate	15:22:33
16	that.	15:22:36
17	MR. GRAHAM: Kelly, just move on, you're	15:22:37
18	getting a little bit upset --	15:22:40
19	MR. STIDHAM: I'm pouring a glass of water.	15:22:42
20	MR. GRAHAM: Mark, just -- just move on.	15:22:45
21	THE WITNESS: Can you restate the question,	15:22:46
22	please.	15:22:47
23	MS. IVERSON: Can you read back the	15:22:47
24	question?	15:22:48
25	(Record read by the reporter as follows:	15:22:58

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1	"QUESTION: And you would not	15:22:16
2	include any kind of interest on that	15:22:18
3	in your plan; right?")	15:22:19
4	THE WITNESS: We would issue back any	15:23:00
5	refunds that were due to the customer relating to	15:23:02
6	sales tax.	15:23:05
7	BY MS. IVERSON:	15:23:06
8	Q In the exact amount of the sales tax that	15:23:06
9	was charged?	15:23:11
10	A In the amount that they were owed back.	15:23:11
11	Q Okay. And how would you determine what	15:23:13
12	they were owed back?	15:23:14
13	A Based upon the ship-from and ship-to	15:23:16
14	addresses.	15:23:19
15	Q And your plan was limited to those amounts	15:23:21
16	and did not include any amounts above that?	15:23:25
17	A It would be what they were due back.	15:23:29
18	Q And when you say "what they were due back,"	15:23:33
19	did that include any kind of interest?	15:23:40
20	A Again, we would refund them based upon what	15:23:43
21	the sales tax that they were due back.	15:23:46
22	MR. GRAHAM: So the answer is no, it did	15:23:49
23	not include interest; correct?	15:23:51
24	THE WITNESS: Yes.	15:23:52
25	///	

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1	BY MS. IVERSON:	15:23:57
2	Q And it did not include any other amounts	15:23:59
3	above the amount of the sales tax that you deemed	15:24:02
4	they were due back?	15:24:07
5	A That we found appropriately -- that we	15:24:09
6	found to be calculated, yes, that is correct.	15:24:12
7	Q Okay. And was your plan only with	15:24:16
8	respect -- I'm sorry. What states were you looking	15:24:24
9	at to refund consumers in?	15:24:28
10	A We would look at all transactions.	15:24:31
11	Q So did that include transactions in states	15:24:42
12	that were not set forth in the amended complaint?	15:24:56
13	A Absolutely, yes.	15:25:01
14	Q And in what instance would you -- did you	15:25:04
15	have a plan to refund people in those other states?	15:25:12
16	A What do you mean?	15:25:16
17	Q Give me an --	15:25:18
18	A I'm just trying to get an example or what	15:25:21
19	you mean by that. I'm not sure I quite understand.	15:25:23
20	Q Yeah, give me an example of somebody in a	15:25:25
21	state that's not the 11 named in the amended	15:25:28
22	complaint that you planned to refund. What would a	15:25:31
23	transaction look like?	15:25:36
24	A That they be overcharged sales tax.	15:25:42
25	Q So would it be if their sales tax rate was	15:25:46

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1	BY MS. IVERSON:	15:43:19
2	Q Okay. Explain that to me.	15:43:19
3	A When I came into LuLaRoe, I went back to	15:43:21
4	reconcile all of the previous filings to ensure that	15:43:25
5	we had reported all sales, and the information that	15:43:29
6	I had received from control then at the time for	15:43:32
7	those sales had given us what sales were done, and	15:43:36
8	we filed and remitted based upon those sales, not	15:43:40
9	necessarily how much was collected.	15:43:44
10	And it wasn't until later that we found out	15:43:48
11	it wasn't until -- that it wasn't what we collected.	15:43:51
12	It was just based on the sales that was processed	15:43:54
13	through Audrey.	15:43:57
14	Q Okay. I'm not really understanding. Maybe	15:43:58
15	let me tell you what I'm hearing and you tell me if	15:44:03
16	I'm correct.	15:44:06
17	A Okay.	15:44:07
18	Q Is it that you went back and looked at the	15:44:07
19	out-of-state sales in which instances the	15:44:13
20	consultants probably would have not charged sales	15:44:18
21	tax, and you actually went through and paid sales	15:44:21
22	tax to the states for that?	15:44:24
23	A We paid it on all sales. So whether it	15:44:25
24	was -- if they did not charge or did charge, the	15:44:29
25	only report that we received from control pad was	15:44:32

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1 what sales were actually done, not the amount of 15:44:35
2 sales tax that was collected for prior. So when we 15:44:39
3 were receiving that data, we received what sales 15:44:43
4 were actually done. So we, therefore, then 15:44:45
5 submitted and paid the sales tax based upon those 15:44:48
6 sales figures. 15:44:52

7 Q Okay. So prior to April, 2016, you were 15:44:52
8 actually paying the sales tax to states or -- when 15:44:56
9 sales tax was not collected from a customer? 15:45:04

10 A Yes. 15:45:07

11 Q And when you changed to the April, 2016, 15:45:08
12 policy, that was no longer the case? 15:45:10

13 A We were still paying based on the sales but 15:45:14
14 also on how much we had collected from the sales 15:45:18
15 tax. So it was reconciling back. 15:45:21

16 Q So you were no longer paying tax that 15:45:22
17 wasn't collected from the customer; is that right? 15:45:27

18 A Yes. 15:45:29

19 Q Okay. And did you ever reconcile how much 15:45:29
20 in sales tax you paid to states that had not been 15:45:35
21 collected from customers because of that toggle 15:45:39
22 switch? 15:45:44

23 A I did a reconciliation but not 15:45:46
24 necessarily -- I believe we've done a reconciliation 15:45:49
25 of that, yes. 15:45:51

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1	Q	Okay. Do you know approximately what that	15:45:51
2		was?	15:45:54
3	A	I don't. Not off the top of my head right	15:45:54
4		now, no.	15:45:57
5	Q	Do you know if it was in the thousands,	15:45:57
6		hundred thousands, millions?	15:45:59
7	A	No, I don't.	15:46:01
8	Q	All right. And I think -- I mean, we've	15:46:06
9		been told this, but I do want to understand from you	15:46:25
10		and get it on the record. I'm going to -- I'm going	15:46:27
11		to give you an example, and I just want to know what	15:46:32
12		happens with the sales tax collected. So if an end	15:46:35
13		consumer in Pennsylvania, which doesn't have sales	15:46:38
14		tax on clothing, purchased on Facebook or online	15:46:42
15		through a consultant who was located in a sales tax	15:46:47
16		state, let's say Washington just for part of this	15:46:51
17		example, and paid a dollar in sales tax, what would	15:46:55
18		happen to that dollar?	15:47:01
19	A	It would have been remitted to Washington.	15:47:02
20	Q	I think in your declaration you said there	15:47:05
21		was some kind of segregated account that it goes	15:47:10
22		into first?	15:47:14
23	A	Yes. It would have gone into the separated	15:47:14
24		from operating accounts. It's a completely separate	15:47:18
25		tax account that we have that just holds sales tax	15:47:22

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1 Q When you say "earlier this year," can you 15:48:24
2 be more specific? 15:48:27

3 A Unfortunately, I didn't make the decision 15:48:28
4 on that. All I know is that it did start to earn 15:48:29
5 interest. 15:48:33

6 Q Was that prior to February 17, 2017? 15:48:33

7 A I don't know off the top of my head, but 15:48:38
8 we've also never taken any funds from the account 15:48:48
9 other than for sales tax, whether refunded to the 15:48:52
10 customer or given to the state. 15:48:56

11 Q All right. So in that example I gave where 15:49:04
12 an end consumer in Pennsylvania bought from someone 15:49:07
13 in Washington and was charged a dollar in sales tax, 15:49:09
14 what if they had three transactions? One was 15:49:12
15 Washington, one was Hawaii, one was Alabama, and 15:49:15
16 they paid a dollar sales tax on each of those 15:49:19
17 transactions, what would happen to that \$3? 15:49:23

18 A It would go to each of the three states. 15:49:27
19 One would go to Washington, one would go to Hawaii, 15:49:30
20 and one would go to Alabama after being deposited 15:49:33
21 into the sales tax account. 15:49:37

22 Q But it would not be paid to Pennsylvania; 15:49:38
23 is that right? 15:49:40

24 A No. 15:49:40

25 Q So generally, the sales tax that was 15:49:40

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1	charged was paid into the state in which the	15:49:45
2	consultant lived?	15:49:48
3	A Based upon, as you see, in the sales tax	15:49:49
4	memo, yes.	15:49:52
5	Q Okay. Does LuLaRoe receive any kind of	15:49:52
6	collection discount for taxes paid into any of the	15:50:07
7	states?	15:50:11
8	A Yes. There are certain timely filing	15:50:13
9	discounts or paying on time discounts, yes, for	15:50:20
10	certain states.	15:50:24
11	Q Do you know what the range of those	15:50:24
12	discounts is?	15:50:26
13	A From \$50 up just depending on what the	15:50:29
14	state deems. But none of those funds were ever	15:50:33
15	taken from the sales tax account and were always	15:50:41
16	left in the sales tax account.	15:50:44
17	Q I'm sorry. I'm just double-checking what	15:50:47
18	you were designated for to make sure I'm segregating	15:51:12
19	my questions accordingly.	15:51:17
20	A No problem.	15:51:20
21	Q Okay. I think we'll move quickly for the	15:51:21
22	rest of this, I hope.	15:51:42
23	MR. GRAHAM: I don't have a dinner	15:51:49
24	reservation till 9:00; so feel free to take your	15:51:50
25	time.	15:51:55

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1	BY MS. IVERSON:	16:01:52
2	Q I just wanted to make sure.	16:01:52
3	MR. GRAHAM: I didn't assign that one to	16:01:54
4	Mark.	16:01:56
5	MR. STIDHAM: No problem.	16:01:57
6	BY MS. IVERSON:	16:01:58
7	Q All right. Have you looked into the	16:01:58
8	purchases of each of the named plaintiffs?	16:02:00
9	A Yes.	16:02:02
10	Q Do you agree that each were charged sales	16:02:03
11	tax on at least one purchase?	16:02:06
12	A Yes.	16:02:07
13	Q And consistent with what we talked about,	16:02:08
14	is it LuLaRoe's position that the tax that was	16:02:14
15	charged to the 11 named plaintiffs was based on the	16:02:17
16	taxing jurisdiction of the consultant they purchased	16:02:20
17	from?	16:02:23
18	A Yes.	16:02:24
19	Q And the sales tax that LuLaRoe collected	16:02:26
20	from each of the named plaintiffs was paid into the	16:02:35
21	taxing jurisdiction which the consultant resides?	16:02:40
22	A Yes.	16:02:43
23	Q And not into the jurisdiction where the	16:02:46
24	11 -- any of the jurisdictions where the 11 named	16:02:52
25	plaintiffs live?	16:02:55

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1	A	Yes.	16:02:56
2	Q	Okay. And some of the named plaintiffs	16:02:56
3		bought from consultants in multiple states that	16:03:01
4		charge sales tax; is that right?	16:03:05
5	A	They just bought from multiple consultants	16:03:06
6		from multiple states.	16:03:09
7	Q	Yes.	16:03:09
8	A	Some of them had sales tax. Some of them	16:03:12
9		did not.	16:03:14
10	Q	Okay. Do you know, for instance, Rachel	16:03:14
11		Webster, how many different states she purchased	16:03:18
12		from that charged sales tax?	16:03:24
13	A	Not right now, no, I do not.	16:03:26
14	Q	Okay. And if, for example -- and I don't	16:03:31
15		know the correct number, but say she purchased from	16:03:36
16		consultants in five different states that charged	16:03:41
17		sales tax, it's correct that that money that was	16:03:43
18		collected from Ms. Webster would have been paid into	16:03:45
19		those five different states?	16:03:49
20	A	Yes.	16:03:51
21	Q	Okay. And that answer would be the same	16:03:52
22		for each of the plaintiffs?	16:03:55
23	A	Yes.	16:03:57
24	Q	And would that answer be the same, then,	16:03:59
25		for each of the end users that received LuLaRoe	16:04:01

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1	products in one of the 11 jurisdictions named in the	16:04:06
2	amended complaint when they purchased from a	16:04:10
3	consultant in a state with sales tax?	16:04:13
4	A Yes. That was based on what our system	16:04:16
5	could do at the time.	16:04:19
6	Q Did -- since issuing refunds after the	16:04:20
7	complaint was filed, did LuLaRoe go back to the	16:04:40
8	states to request adjustments under the co-vendor	16:04:45
9	agreements?	16:04:49
10	A Yes. We took the credits for those	16:04:50
11	particular locations where sales tax was refunded	16:04:54
12	from to the customers and took the credits back on	16:04:58
13	those particular states where it was paid.	16:05:04
14	Q I think at one point I read that	16:05:06
15	Mr. Stidham had called it a zero sum game.	16:05:12
16	Would you agree with that?	16:05:16
17	A What do you mean by -- I'm trying to	16:05:17
18	understand what you mean by "zero sum game."	16:05:20
19	Q That the amounts you refunded that was	16:05:23
20	either from your sales tax account or you would have	16:05:34
21	received it back from the states; so LuLaRoe was not	16:05:37
22	ultimately out any money for refunding these taxes?	16:05:42
23	A We were never enriched by the sales tax at	16:05:47
24	all. It was, as he said, a zero gain or loss on our	16:05:50
25	behalf because it's not our funds. It was coming	16:05:56

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1	from the customer -- the end consumer and was paid	16:06:00
2	to the state. If it was paid to the incorrect	16:06:04
3	state, we got the credit and paid it to the correct	16:06:06
4	state or refunded the customer; so, therefore, any	16:06:09
5	offsets would have offset each other and would not	16:06:12
6	have been anything to LuLaRoe.	16:06:17
7	MS. IVERSON: I think I'm done. Do you	16:06:31
8	mind if we take a quick five-minute break?	16:06:33
9	MR. GRAHAM: No problem.	16:06:37
10	MS. IVERSON: I'd like to re-review my	16:06:38
11	outline.	16:06:40
12	THE VIDEOGRAPHER: The time is 4:06 p.m.	16:06:42
13	We're now off the record.	16:06:44
14	(Recess taken from 4:06 p.m. to 4:25 p.m.)	16:06:45
15	THE VIDEOGRAPHER: The time is 4:25 p.m.,	16:25:25
16	and we're back on the record.	16:25:27
17	BY MS. IVERSON:	16:25:28
18	Q On Exhibit R, which is the first set of	16:25:30
19	interrogatories, we asked you about how many and how	16:25:33
20	much you had charged in sales tax to the	16:25:40
21	jurisdictions in the amended complaint, and then we	16:25:45
22	also asked you about the refunds that you issued.	16:25:47
23	A Uh-huh.	16:25:51
24	Q And those numbers matched; right?	16:25:51
25	A Say that again.	16:25:55